IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]
Description of case

Criminal Appeal No. 1341 of 2001 **Decided on : March 28, 2007**
(Old No. 471/1988)

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 28.03.2007

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 1341 of 2001

Old No. 471 of 1988

Bhup Singh S/o Prem Singh,
Village Chanan, P.O. Gular Bhoj,
P.S. Gular Bhoj, District Nainital.

……. Appellant.

Versus

State of Uttaranchal

……. Respondent.

Smt. Pushpa Joshi, Advocate for the appellant.
Mr. H.C. Pandey A.G.A. for the State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.) is directed against the judgment and order dated 26.11.1987 passed by learned Sessions Judge, Nainital in Sessions Trial No. 91 of 1986, whereby accused/appellant Bhup Singh in convicted under Section 302 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and was sentenced to undergo imprisonment for life.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that the house of the accused/appellant, Bhup Singh is situated at a distance of 125 yards away from the house of his father in law in village

Chandraman, within the limits of Police Station Gadarpur, District Nainital (now part of District Udham Singh Nagar) on 23.12.1985 at about 7.15 p.m. accused/appellant Bhup Singh poured kerosene oil on his wife, Smt. Mango Devi (deceased) and set her on fire. Smt. Mango Devi caught fire and ran out of the house for help. Near a hand-pump, outside her house, some neighbours attempted to extinguish the fire of her cloths. She continued to ran and reached her father's house. P.W. 2, Gopali, is father of the deceased Smt. Mango Devi. P.W. 1 Sher Singh is brother of the deceased. Smt. Mango Devi in injured condition, as soon as reached her father's house, told her father and to her brother that her husband, Bhup Singh (accused/appellant) had poured kerosene oil and set her on fire. P.W. 1, Sher Singh took her in a cart to the hospital and on the way lodged a verbal report with out post Gular Bhoz of Police Station Gadarpur at about 8.20 p.m.. P.W. 4, J.P. Naithani, Sub Inspector, immediately recorded the statement of the injured Smt. Mango Devi (a copy of which is Ext. A7) and sent her to Primary Health Centre, Gadarpur, for treatment. When she was admitted in the Primary Health Centre, Gadarpur, her injuries were recorded by P.W. 3, Dr. K.B. Singh and a report (Ext. A 3) was prepared. On the third day, from the said Primary Health Centre, since her condition continued to deteriorate, the injured was referred to Civil Hospital, Kashipur, where she succumbed to the injuries. Meanwhile, the Investigating Officer interrogated the witnesses and inspected the spot. He also recovered empty bottle of kerosene oil from the house of accused, Bhup Singh. A piece of burnt DHOTI belonging to Smt. Mango Devi, was also recovered near the hand pump, outside the house of accused/appellant. The recovery memo was prepared in respect of these articles by the police. After the death of Smt. Mango Devi, her dead body was taken into possession by the Police and inquest report (Ext. A 2) was prepared. The Police also prepared Form No. 33 (Ext. A 10), sketch of the dead body (Ext. A 11) and letter to the Chief Medical

Officer for postmortem examination. The postmortem examination was conducted on 26.12.1985 at about 11.30 a.m. by the Medical Officer of the L.D. Bhatt Civil Hospital, Kashipur, who prepared autopsy report (Ext. A 12). On completion of the investigation, charge sheet (Ext A 6) is submitted by the Investigating Officer to the Chief Judicial Magistrate.

4) The Magistrate on receipt of the charge sheet, after giving necessary copies to the accused/appellant, as required under Section 207 of the Cr.P.C., committed the case to the Court of Sessions for trial. Learned Sessions Judge, on 6.8.1986, after hearing the prosecution and the defence framed charge of offence punishable under Section 302 of the I.P.C., against the accused, Bhup Singh, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1, Sher Singh (Informant and brother of the deceased), P.W. 2, Gopali (father of the deceased), P.W. 3, Dr. K.B. Singh, who recorded the burn injuries on the person of deceased at the time of her admission in Primary Health Centre, Gadarpur on 23.12.1985 and P.W. 4, Sub Inspector J.P. Naithani, who investigated the crime. The other formal witnesses were not examined by the prosecution as the genuineness of the documents like postmortem report (Ext. A 12), inquest report (Ext. A 2), charge sheet (Ext. A 6), Police Form No. 33 (Ext. A 10) and sketch of the dead body (Ext. A 11) were admitted by the defence counsel before the trial court and their formal proof was dispensed with. The oral and documentary evidence was put to the accused, Bhup Singh, who alleged the same to be false. In his replies, under Section 313 of Cr.P.C., to the queries of the Court, the accused pleaded that the incident had taken place in the house of father of the deceased and not in his hose. However, no evidence in defence is adduced. The trial court after hearing the parties found accused, Bhup Singh guilty of charge of offence punishable under Section 302 of the I.P.C. and convicted him accordingly. After

hearing the parties on sentence, the accused is sentenced to imprisonment for life vide impugned order dated 26.11.1987. Aggrieved by said judgment, this appeal was preferred before Allahabad High court, in the year 1988, from where it has been received by transfer to this Court under Section 35 of U.P. Reorganization Act, 2000, for its disposal.

5) Before further discussions, it is pertinent to mention here, the injuries found on the person of Smt. Mango Devi (deceased) at the time of her admission on 23.12.1985 in Primary Health Centre, Gadarpur. The injuries recorded in medical report (Ext. A 3) by P.W. 3, Dr. K.B. Singh discloses following injuries :

> ***"1. Superficial burn over the face, neck chest and front of trunk back and lumber reason. Both arms completely extending on the surface. Skin blackened and hairs were singed and smell of kerosene oil was present."***

According to Dr. K.B. Singh, Smt Mango Devi sustained more than 50% burn on her body. Her pulse was feeble and her general condition was very low. This witness has further stated that after condition continued to deteriorate, she was referred to Civil Hospital, Kashipur.

Postmortem examination report (Ext. A 12) shows that at the time of autopsy on 26.12.1986 following ante mortem injuries were found on the person of deceased, Mango Devi:

> ***"1) Superficial dry burns present on face, neck and front of chest and abdomen, both arms up to wrist and anterior and posterior aspects with some areas of deep burns in between.***
> ***2) Superficial to deep burns present on the anterior as well as posterior aspects of right leg up to ankle. Total burns more than 80%.***
> ***3) Smell of kerosene present from scalp burns."***

The Medical Officer, who conducted the postmortem examination, found cause of death 'due to shock from dry burns'.

6) From the above medial evidence as far as the death of deceased due to burn injuries is established. Now the question is who has caused these injuries on the person of the deceased.

7) It is also not disputed by accused appellant that deceased was his wife.

8) Before discussing the oral testimony of P.W. 1, Sher Singh and P.W. 2, Gopali, it is also pertinent to mention here regarding the dying declaration (copy Ext. A-7) made by the deceased during her examination, under Section 161 of the Cr.P.C., recorded by P.W. 4, J.P. Naithani, Investigating Officer. In her statement to the Investigating Officer, which was recorded at about 8.20 p.m. shows that the deceased told to the Investigating Officer that she got married about 10-11 years back with Bhup Singh S/o Prem Singh of Village Chandraman. She further told that her husband was not doing any work and used to sell whatever land they had. He used to beat her. On the day of incident, the deceased told the Investigating Officer that at about 7 p.m., her husband demanded food from her, on which she replied to him that when he was not earning anything, from where she could provide the food. On this, accused Bhup Singh, poured kerosene oil on her (deceased) and set her on fire with a stick of match box. The deceased further told to the Investigating Officer that her clothes caught fire and she ran outside her house for help. Near a hand pump some neighbours poured water on her to extinguish the fire. She reached running to the house of his brother, Sher Singh, who took her in a cart to police out post.

9) P.W. 1, Sher Singh, brother of the deceased, narrating the prosecution story, has stated on oath that on the day of incident at about 7-7.30 p.m., his sister Smt. Mango Devi (deceased) came

running to his house with burn injuries. The witness says that she told him that her husband has set her on fire after pouring kerosene oil. P.W. I, Sher Singh, further states that he took Smt. Mango Devi, in a cart with her father to police out post, Gular Bhoz and lodged the verbal report. He proved F.I.R. (Ext. A 1). He is also witness of the inquest report (Ext. A 2) prepared by the Police and has proved the same.

10) P.W. 2, Gopali, father of the deceased has also corroborated the story narrated by P.W. 1, Sher Singh. This witness also states on oath that his daughter got married to Bhup Singh about 10-11 years back. The witness further states that his house is at a distance of 100-125 yards from the house of his son-in-law (Bhup Singh). P.W. 2, Gopali, further says that Bhup Singh and Mango Devi had two children, one (son) aged four years and another (daughter) aged two years. On the date of incident, the witness states that at about 7-7.30 p.m. Mango Devi came running to his house. He saw her in burnt condition. The witness further states that Mango Devi told him that her husband poured kerosene oil on her and set her on fire with a match box. The witness further corroborates that she was taken in a cart to police out post and from there she was taken to Gadarpur Hospital.

11) Smt. Pushpa Joshi, learned counsel for the appellant, vehemently argued that no independent witness was got examined on behalf of prosecution. She further contended that testimony of P.W. 1, Sher Singh and P.W. 2, Gopali should not be believed as they are relatives of the deceased. For non-examination of the neighbours, it has come in the testimony of P.W. 2, Gopali that witness Chandu had died, and witness Manto Devi and Bali are close relatives of the accused Bhup Singh. The explanation given by this witness regarding the relationship of Manto Devi and Bali with the accused and as to the death of Chandu is sufficient to

explain as to why the prosecution could not examine these witnesses. Otherwise also even if neighbours are not examined, the testimony of the relatives of the deceased cannot be disbelieved merely for the reason that they are the relatives provided the same gets corroboration from the other evidence on record. The testimony of the two eye witnesses is fully corroborated not only from the medical evidence mentioned about but also the dying declaration recorded by the Investigating Officer.

12) On behalf of the appellant, it is also submitted that P.W. 3, Dr. K.B. Singh has stated in his cross-examination that she was not in a position to make the statement due to semi-conscious condition. It is further contended on the basis of that statement that in such condition the deceased could not have made any dying declaration to the Investigating Officer. After going through whole of the statement of P.W. 3, Dr. K.B. Singh, it is clear that where he has mentioned that the deceased was unable to make a statement he refers to the period after six hours of the incident, while the statement made to the Investigating Officer is approximately within one hour of the incident. It is natural that after more than 50% burns, the condition of the injured was worsening. The statement of P.W. 1, Sher Singh, brother of the deceased and that of P.W. 2, Gopali, also corroborate the fact that when the deceased got the burn injuries she rushed to their house, which is at a distance of about 125 yards and told them that her husband had set her on fire. Keeping in view the statements of the aforesaid two witnesses, the statement made by P.W. 4, J.P. Naithani that when these two witnesses were taking the injured to the hospital and on its way they lodged First Information Report at the police out post, Gular Bhoz, where her statement was recorded by him under Section 161 of the Cr.P.C. a copy of which is Ext. A 7, cannot be doubted. We are in agreement with the trial court, who while believing of the dying declaration of the deceased after relying the

principle of law laid down by Apex Court in the State of Assam Vs. Muhim Baradhani 1971 Cr.L.J. 152, in which it has been held that the dying declaration recorded by the Police Officer need not necessarily be disbelieved.

13) Out attention is drawn by learned counsel for the appellant to the defence case that the incident has not taken place in the house of accused Bhup Singh. In this connection it is further submitted that the suggestion in this regard is made to P.W. 1, Sher Singh and P.W. 2 Gopali and also in replies, under Section 313 of the Cr.P.C., the accused has mentioned that his wife was not living with him. No evidence has been adduced by the defence that accused was not living with his wife. The natural presumption is that the wife was living with her husband. The learned counsel for the appellant in this regard submitted that it is not a case of 304-B of the I.P.C. where the husband has to shows his innocence. We are of the view that the argument of learned counsel for the appellant is mis-conceived. Section 113-A and Section 113-B of the Indian Evidence Act, 1872, provide that presumption as to abetment and cruelty can be gathered in the cases of suicide by a married woman and in the cases of dowry death respectively. As far as presumption of wife being living with her husband is concerned, it is natural one unless and until otherwise shown. Apart from this the dying declaration of the deceased and the statement of the P.W. 1, Sher Singh and P.W. 2, Gopali also show that the deceased was living with her husband. As such, the trial court has committed no error of law or that of fact in appreciating the evidence on record.

14) For the reasons, as discussed above, we are in full agreement with the trial court that the charge of offence punishable under Section 302 of the I.P.C. is proved from the prosecution evidence on record. Accordingly the appeal is liable to be dismissed. The same is dismissed. Appellant is on bail. His bail is cancelled. Trial

Court is directed to take the appellant into custody to make him to serve out the sentence.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt. March 28, 2007.
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